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AUG 14 2015

6 **RICHARD W. WIEKING**
7 CLERK, U.S. DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE
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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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15 JIHAD MOHAMMAD-BEY,) No. C 15-1891 LHK (PR)
16 Plaintiff,) ORDER OF SERVICE;
vs.) DIRECTING DEFENDANTS TO
CORRECTIONAL OFFICER J. CRUZEN,) FILE DISPOSITIVE MOTION OR
et al.,) NOTICE REGARDING SUCH
Defendants.) MOTION
17 _____)

18 Plaintiff, a California state prisoner proceeding *pro se*, filed this civil rights action under
19 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed in forma pauperis in a separate
order. For the reasons stated below, the court orders service upon the defendants.

20 **DISCUSSION**

21 A. Standard of Review

22 A federal court must conduct a preliminary screening in any case in which a prisoner
23 seeks redress from a governmental entity or officer or employee of a governmental entity. *See*
24 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss
25 any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or
26 seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C.
27 § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See* *Balistreri v.*
28 *Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
2 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
3 the alleged violation was committed by a person acting under the color of state law. *See West v.*
4 *Atkins*, 487 U.S. 42, 48 (1988).

5 B. Legal Claims

6 Plaintiff is a practicing Muslim incarcerated at San Quentin State Prison (“SQSP”). As
7 part of his religious beliefs, plaintiff must pray five times daily at specified times. Plaintiff also
8 believes that he will receive at least 25 times more blessings during a congregational prayer than
9 during individual prayer. Plaintiff began to offer congregational prayer with up to 30 Muslim
10 prisoners in SQSP West Block. At some point thereafter, SQSP staff created a rule prohibiting
11 SQSP Muslim inmates from offering congregational prayer in groups of more than 4 inmates at a
12 time.

13 On September 22, 2013, non-defendant Correctional Sergeant Dutton prohibited plaintiff
14 and other Muslim prisoners from offering congregational prayers of more than 4 prisoners during
15 “open dayroom” even though a group of about 25 Christian prisoners was simultaneously
16 offering a congregational prayer and was not interrupted by correctional staff.

17 Plaintiff and other Muslim prisoners filed a group administrative grievance, complaining
18 that they were being discriminated against based on their religion. At the third level of review,
19 plaintiff’s appeal was granted, and the complaint was referred to the Religious Review
20 Committee. On May 14, 2014, the Religious Review Committee decided to allow Muslim
21 prisoners at SQSP to participate in congregation prayer of no more than 15 prisoners during
22 “open dayroom.”

23 Beginning on June 28, 2014, plaintiff and other Muslim prisoners offered congregation
24 evening/sunset prayer every day without incident until July 25, 2014. On July 25, 2014, plaintiff
25 and approximately 14 other Muslim prisoners began their congregational prayer. Before they
26 were finished, defendants Correctional Officers J. Cruzen, C. Caldera, R. Christensen, and D.
27 Ogle interrupted the prayer group. Cruzen issued a direct order for plaintiff and the others to
28 stop. One of the Muslim prisoners told Cruzen that a group appeal had been granted and that

1 they were authorized to perform congregational prayers. Cruzen angrily responded that the
2 appeal had been rescinded, and they were not allowed to have more than 4 people praying. Even
3 after Cruzen was shown a copy of the granted appeal and the memorandum authorizing Muslim
4 prisoners to engage in congregational prayer of up to 15 people, Cruzen stated that it did not
5 matter and insisted that the Muslim prisoners needed to leave. Cruzen's behavior began to turn
6 hostile, and all defendants placed their hands on their batons as if threatening to physically
7 assault plaintiff and the Muslim prisoners.

8 Liberally construed, plaintiff has stated cognizable claims that defendants violated the
9 First Amendment Free Exercise Clause, First Amendment Establishment Clause, First
10 Amendment right against retaliation, Fourteenth Amendment right to equal protection, and the
11 Religious Land Use and Institutionalized Persons Act.

12 CONCLUSION

13 1. The clerk of the court shall mail a Notice of Lawsuit and Request for Waiver of
14 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint
15 and all attachments thereto (docket no. 1), and a copy of this order to **Correctional Officers J.**
16 **Cruzen, C. Caldera, R. Christensen, and D. Ogle at San Quentin State Prison.** The clerk of
17 the court shall also mail a courtesy copy of the complaint and a copy of this order to the
18 California Attorney General's Office. Additionally, the clerk shall mail a copy of this order to
19 plaintiff.

20 2. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure
21 requires them to cooperate in saving unnecessary costs of service of the summons and complaint.
22 Pursuant to Rule 4, if defendants, after being notified of this action and asked by the court, on
23 behalf of plaintiff, to waive service of the summons, fail to do so, they will be required to bear
24 the cost of such service unless good cause be shown for their failure to sign and return the waiver
25 form. If service is waived, this action will proceed as if defendants had been served on the date
26 that the waiver is filed, and defendants will not be required to serve and file an answer before
27 sixty (60) days from the date on which the request for waiver was sent. Defendants are asked to
28 read the statement set forth at the bottom of the waiver form that more completely describes the

1 duties of the parties with regard to waiver of service of the summons. If service is waived after
 2 the date provided in the Notice but before defendants have been personally served, the Answer
 3 shall be due sixty (60) days from the date on which the request for waiver was sent or twenty
 4 (20) days from the date the waiver form is filed, whichever is later.

5 3. No later than **sixty (60) days** from the date the waivers are sent from the court,
 6 defendants shall file a motion for summary judgment or other dispositive motion with respect to
 7 the cognizable claims in the complaint.

8 Any motion for summary judgment shall be supported by adequate factual documentation
 9 and shall conform in all respects to Rule 56 of the Federal Rules of Civil Procedure. Defendants
 10 are advised that summary judgment cannot be granted, nor qualified immunity found, if
 11 material facts are in dispute. If defendants are of the opinion that this case cannot be
 12 resolved by summary judgment, they shall so inform the court prior to the date the
 13 summary judgment motion is due.

14 4. Plaintiff's opposition to the dispositive motion shall be filed with the court and
 15 served on defendants no later than **twenty-eight (28) days** from the date defendants' motion is
 16 filed. Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and
 17 *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986) (holding party opposing summary judgment must
 18 come forward with evidence showing triable issues of material fact on every essential element of
 19 his claim).

20 5. Defendants shall file a reply brief no later than **fourteen (14) days** after plaintiff's
 21 opposition is filed.

22 6. The motion shall be deemed submitted as of the date the reply brief is due. No
 23 hearing will be held on the motion unless the court so orders at a later date.

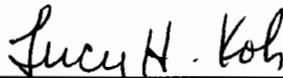
24 7. All communications by the plaintiff with the court must be served on defendants
 25 or defendants' counsel, by mailing a true copy of the document to defendants or defendants'
 26 counsel.

27 8. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
 28 No further court order is required before the parties may conduct discovery.

1 9. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
2 and all parties informed of any change of address and must comply with the court's orders in a
3 timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
4 pursuant to Federal Rule of Civil Procedure 41(b).

5 IT IS SO ORDERED.

6 DATED: 8/13/2015



LUCY H. KOH
United States District Judge

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